U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9091946

Date: JULY 2, 2020

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a competitive athlete in taekwondo and kickboxing, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not provided documentation satisfying the initial evidence requirements set forth at 8 C.F.R § 204.5(h)(3), which requires documentation of a one-time achievement or evidence that meets at least three of the ten alternate regulatory criteria. The Director further found that the Petitioner did not establish that he would continue work in his area of expertise in the United States. We dismissed the Petitioner's appeal from that decision.[1] The matter is now before us on a combined motion to reopen and motion to reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss both motions.

I. MOTION REQUIREMENTS

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

[1] As we found that the Petitioner had not established his extraordinary ability under section 203(b)(1)(A)(i) of the Act and was therefore ineligible for the classification, we did not address the Director's separate finding with respect to whether the Petitioner would continue to work in his area of expertise in the United States.

II. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens with extraordinary ability. The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

III. ANALYSIS

The issue before us on motion is whether the Petitioner has either submitted new facts supported by documentary evidence sufficient to warrant reopening his appeal and/or established that our decision to dismiss his appeal was based on an incorrect application of U.S. Citizenship and Immigration Services (USCIS) law or policy.

A. AAO Decision

In our appellate decision, we determined that the Petitioner claimed, but did not demonstrate, that he had received a major internationally recognized award that qualifies as a one-time achievement pursuant to 8 C.F.R. § 204.5(h)(3). We acknowledged the Petitioner's claim to have met six of the ten alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i) – (x), summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the alien in professional or major media;
- (iv), Participation as a judge of the work of others in his field;
- (v), Original contributions of major significance; and
- (viii), Leading or critical role for distinguished organizations or establishments.

We found that the Petitioner had met only one criterion, relating to nationally or internationally recognized awards, at 8 C.F.R. 204.5(h)(3)(i). The Petitioner contends, on motion, that he met all six of these criteria and also documented his receipt of a major internationally recognized award that qualifies as a one-time achievement. For the reasons set forth below, the Petitioner has not submitted new facts or evidence establishing that he meets any additional criteria, nor has he shown that our prior decision was based on an incorrect application of law or USCIS policy.

B. Motion to Reopen

The Petitioner does not provide any new facts in his brief but has submitted new evidence in support of his motion to reopen. This evidence includes screenshots from a *YouTube* video titled [redacted] posted on the Fight Planet channel on [redacted] 2019. One of the screenshots shows that the Petitioner was the winner of this fight. The Petitioner has not addressed the significance of this new evidence or submitted any additional explanation or evidence regarding [redacted] although it appears it may be intended to address the awards criterion at 8 C.F.R. § 204.5(h)(3)(i). The Petitioner has neither claimed nor established that winning this match at [redacted] resulted in his receipt of a major internationally recognized award that qualifies as one-time achievement pursuant to 8 C.F.R. 204.5(h)(3).

Further, based on this limited evidence, it appears that the Petitioner competed in this event subsequent to the date of filing this petition in February 2018. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998).

Regardless, as noted, we previously determined that the Petitioner satisfied the lesser nationally or internationally recognized criterion at 8 C.F.R. § 204.5(h)(3)(i) based on previously submitted evidence. This new evidence does not overcome any of the evidentiary deficiencies we addressed in dismissing the Petitioner's appeal.

The Petitioner also submits two documents titled "Official's License" from the Professional Kickboxing and Kagefighting Federation. One of the documents was issued to the Petitioner in March 2019 and states that he "has attained the license of Professional Cornerman" and is a member of the federation in good standing. The other states that the Petitioner "has attained the license of Amateur Kickboxer." Both licenses were issued to the Petitioner more than one year after the filing of the petition and cannot establish his eligibility at the time of filing. *See* 8 C.F.R. § 103.2(b)(1). Further, the Petitioner has not explained the significance of the evidnece or why it would warrant reopening his appeal.

Finally, the Petitioner has submitted a printout of an online article titled [redacted] which is dated [redacted] 2017 and was published by Ashgabat 2017 (www.ashgabat2017.com), the website of the [redacted] Indoor & Martial Arts Games. The article confirms that the Petitioner was the gold medal winner in the [redacted] event at the [redacted] Kickboxing Championship, which the Petitioner claims is a major internationally recognized award and qualifying one-time achievement under 8 C.F.R. § 204.5(h)(3).

In determining that the Petitioner did not establish that his first place finish in this competition was a major internationally recognized award, we observed that the submitted evidence did not demonstrate the international import of the tournament or establish that the medals bestowed at the event are recognized beyond the participants and organizers of the event at a level commensurate with a major, internationally recognized award, such as a Nobel Prize. For example, we noted that the record did not demonstrate that there was a rigorous selection process for the tournament or establish that the

Petitioner's event attracted a substantial audience, received significant international media coverage or that his award was otherwise internationally recognized. The new article submitted on motion was published by the organizers of the event on the event's own website and therefore does not cure these deficiencies.

We have also considered this new evidence under the published materials criterion at 8 C.F.R. § 204.5(h)(3)(iii), which requires the Petitioner to submit published material that is about him and relating to his work in his field. The Petitioner must establish that the published materials appeared in professional or major trade publications or other major media, and include the title, date and author of the material. The newly submitted article published on the Ashgabat 2017 website primarily focuses on the overall country medal standings as of the fourth day off the [redacted] Kickboxing Confederation [redacted] Championships and provides results of some individual events held on that day. The article does mention the Petitioner and include a quote from him, noting that he won gold in the [redacted] [redacted] fight event, but lost to an athlete from [redacted] in the [redacted] kick light final. However, even if we determined that this article is about the Petitioner, he has not established that it meets all elements of the criterion at 8 C.F.R. § 204.5(h)(3)(iii). The article does not identify the author of the material and is not accompanied by evidence that the Ashgabat 2017 website is a professional publication, major trade publication or other major medium.

For the foregoing reasons, although the Petitioner has submitted new evidence on motion, he has not submitted sufficient new facts supported by affidavits or other documentary evidence to warrant the reopening of this matter. 8 C.F.R. § 103.5(a)(2). Accordingly, the motion to reopen will be dismissed.

B. Motion to Reconsider

In support of the motion to reconsider, the Petitioner submits a brief in which he addresses the evidentiary criteria at 8 C.F.R. § 204.5(h)(3) and asserts that we erred in determining that the previously submitted evidence satisfied only one of these criteria. For the reasons discussed below, the Petitioner's motion to reconsider does not establish that our prior decision was based on an incorrection application of law or USCIS policy.

1. One Time Achievement

First, the Petitioner disputes our determination that his gold medal received at the 2017 [redacted] Kickboxing Championship is not a qualifying one-time achievement pursuant to 8 C.F.R. § 204.5(h)(3), stating that it "definitely qualifies as a major, internationally recognized award, as per documentation submitted."

We acknowledged that the Petitioner submitted evidence of his first-place finish and a press release from the [redacted] Kickboxing Organizations [redacted] which discussed the event, in which athletes from 15 countries competed. However, as discussed above, we found that the limited documentation submitted did not establish the international import of this championship tournament or establish that the Petitioner's first-place finish was recognized beyond the participants and organizers at a level commensurate with a major internationally recognized award.

We also stressed that, given Congress' intent to restrict this visa category to "that small percentage of

individuals who have risen to the very top of their field of endeavor," the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. Congress' example of a one-time achievement is a Nobel Prize. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The regulation is consistent with this legislative history, stating that a one-time achievement must be a major, internationally recognized award. 8 C.F.R. § 204.5(h)(3).

The Petitioner's assertion on motion that his gold medal at the 2017 [redacted] Kickboxing Championship "definitely qualifies" as a major internationally recognized award does not demonstrate how we incorrectly applied the applicable law or USCIS policy in evaluating his evidence.

2. Evidentiary Criteria

In the brief submitted on motion, the Petitioner also disputes our determination that he did not satisfy five of the six alternate evidentiary criteria he claimed to meet at 8 C.F.R. § 204.5(h)(3)(i)-(x). Although the Petitioner disputes our findings, we emphasize that merely disagreeing with our conclusions does not provide a basis for reconsideration of our decision. The Petitioner must establish that we erred as a matter of law or policy in analyzing the evidence before us or point to precedent decisions that contradict our analysis of the evidence.

> *Documentation of the individual's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii)

In our appellate decision, we considered the Petitioner's membership on the [redacted] National Junior Taekwondo Team but found that he had not shown that the membership requires outstanding achievements as judged by recognized national or international experts. We acknowledged that the Petitioner submitted letters from an official of the national federation in the sport, but noted that the letters were not sufficiently specific with respect to the national team membership requirements or selection processes, and were not accompanied by any corroborating evidence such as published rules governing team selection.

On motion the Petitioner asserts that the previously submitted evidence satisfied the requirements of 8 C.F.R. § 204.5(h)(3)(ii) and that we erred in finding otherwise. He reiterates that the national taekwondo team of [redacted] "require[s] outstanding achievements of its members as judged by the nationally and internationally recognized experts." The Petitioner does not, however, specifically argue that our decision was based on an incorrect application of law or policy. Disagreeing with our conclusions without establishing that we erred as a matter of law or pointing to policy that contradicts our analysis of the evidence is not a ground to reconsider our decision. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit, in essence, the same brief and seek reconsideration by generally alleging error in the prior decision).

The Petitioner does not establish, on motion, that he is a member of associations in the field that require outstanding achievements of their members, as judged by recognized national or international experts.

> *Published material about the individual in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

In our appellate decision, we acknowledged that the Petitioner submitted one published article from the newspaper *Varzish Sport*, which was about him and relating to his work in the field. However, the article was published nearly ten months after the filing of the petition. We emphasized that, under 8 C.F.R. § 103.2(b)(1), the Petitioner must establish eligibility for the requested benefit at the time of filing. Because the article in *Varzish Sport* post-dated the filing of the petition and therefore could not establish the Petitioner's eligibility under this criterion, we did not reach a determination of whether this publication is a professional publication, major trade publication or other major medium.

On motion, the Petitioner incorrectly states that we based our determination on a finding that "the evidence does not indicate that the material was published in professional or major trade publications or other media," and cites case law in support of his claim that we acted "arbitrarily or capriciously" in evaluating this criterion. The Petitioner does not acknowledge or contest our finding that the sole article submitted was published subsequent to the date of filing and therefore cannot establish that he met this criterion in February 2018 when he filed the petition.

Accordingly, the Petitioner has not established on motion that we incorrectly applied the law or USCIS policy in evaluating this criterion.

> *Evidence of the individual's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv)

In dismissing the Petitioner's appeal, acknowledged that the Petitioner submitted several letters from [redacted] the president of the National Taekwondo and Kickboxing Federation [redacted], who attested to his judging experience. However, the letters contained inconsistent information. In a letter submitted at the time of filing, [redacted] states that the Petitioner "completed a course in ITF judging rules and served as a judge" at six listed competitions held between March 2015 and May 2017. In response to the Director's request for evidence (RFE), the Petitioner submitted another letter from [redacted], in which he states that the Petitioner judged only four competitions, held between May 2014 and May 2015, including only three of the six competitions listed in the previous letter. He states that the Petitioner served as a "side judge" at all these competitions. In a second letter provided in response to the RFE, [redacted] states he can confirm that the Petitioner served as "an official judge (Corner Judge) for the National Taekwondo Championship of the [redacted] in May 2015.

Because of the unexplained inconsistencies in these statements, we found that they were insufficient on their own to establish the Petitioner's participation as a judge. We emphasized that if testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). However, the Petitioner relied solely on [redacted]'s letters and did not submit corroborating evidence, such as his

International Taekwondo Federation (ITF)-issued judging certification, his event-specific judging credentials, or official records from one or more events in which he claims he served on a judging panel to show that he both possesses the necessary qualifications as an ITF judge and actually participated as a judge in the competitions.

On motion, the Petitioner asserts that he provided "extensive evidence establishing his participation as a judge" and mentions that he served as a corner judge at a national taekwondo championship in [redacted] The Petitioner does not address our determination that his evidence consisted primarily of inconsistent statements from [redacted] or explain how we incorrectly applied law, USCIS policy or relevant case law to the facts presented by finding those letters alone to be insufficient to establish his eligibility under the criterion at 8 C.F.R. 204.5(h)(3)(iv). Therefore, the Petitioner has not shown on motion that he meets this criterion.

> *Evidence of the individual's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v)

In our appellate decision, we addressed testimonial evidence praising the Petitioner's athletic talents and achievements but determined that the evidence did not specifically articulate how he has made original contributions that have remarkably impacted the field or otherwise risen to the level of major significance in the field.

On motion, the Petitioner disputes our conclusion, but does not establish that it was based on an incorrect application of law or USCIS policy. The Petitioner cites to case law in support of his claim that expert testimony "cannot be rejected outright" and "an expert letter may not be dismissed without a specific, cogent reason for finding that it is not credible evidence in support of the petition." However, we did not reject or dismiss the Petitioner's expert opinion letters outright; we considered their contents and explained our reasons for determining that they were insufficient to establish that the Petitioner's eligibility under this criterion. The Petitioner also claims on motion that we inappropriately rejected the letters "for alleged lack of additional supporting documentation," but we did not mention a lack of supporting documentation in addressing this criterion.

We agree with the Petitioner that the opinions of experts are not without weight, and our decision reflects that we evaluated the letters he provided. With respect to evaluating evidence submitted in support of the criterion at 8 C.F.R. §204.5(h)(3)(v), letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.[2] Letters that lack specifics do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.[3] The letters mentioned the Petitioner's athletic successes in national and international competition and his membership on a national team, but did not demonstrate how these activities equate to "original" athletic contributions of major significance in the field.

The Petitioner has not shown, on motion, that we incorrectly applied law or USCIS policy to the facts of his case in evaluating this criterion.

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[2] *See* USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 8-9 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

[3] *Id.* at 9.

Evidence that the individual has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

In our prior decision, we noted that the initial evidence submitted with the petition, including a personal statement from the Petitioner and a letter from [redacted] did not include any mention of the Petitioner serving as the captain of [redacted]'s national or junior national taekwondo team. Later, in response to the Director's RFE, the Petitioner submitted a new letter from [redacted] asserting that he had been selected as team captain in 2016, and led the team to a third place finish at the [redacted] Junior and [redacted] Veteran World ITF Taekwondo Championship.[4] We determined that [redacted]'s letter alone was insufficient to establish that the Petitioner held a formal team captain role that was critical to the team's success, and noted a lack of supporting evidence, such as a team roster or letter from the team captain. In addition, we noted that, although requested by the Director, the Petitioner did not submit evidence to establish that the [redacted] national or junior national taekwondo team has a distinguished reputation in the sport.

On motion, the Petitioner asserts that he "provided extensive evidence establishing that he performed in a critical role in the [redacted] National Taekwondo and Kickboxing team, having occupied the position of team captain in 2016." However, the Petitioner does not address our reasons for determining that his evidence was insufficient or explain how we incorrectly applied the law or policy to the facts of his case with respect to this criterion.

For the reasons discussed above, the Petitioner has not demonstrated that our appellate decision was incorrect. We conducted a *de novo* review of the record on appeal, thoroughly analyzed the evidence, and ultimately concluded that the Petitioner did not satisfy at least three regulatory criteria. Although he makes additional arguments on motion relating to a final merits determination, the Petitioner has not submitted the required initial evidence meeting at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20.

III. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause for reopening or reconsideration and has not overcome the grounds for dismissal of the appeal.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[4] We noted that the Petitioner submitted a copy of his "Participation Certificate" from this competition but did not provide evidence of any individual or team awards or prizes awarded to him at this event.